

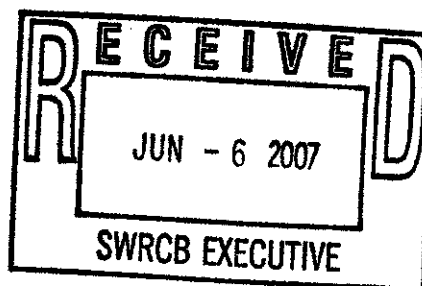


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June 5, 2007

Song Her, Clerk to the Board  
State Water Resources Control Board  
1001 I Street  
Sacramento, CA 95814



*RE: June 16, 2007 Workshop to Receive Information Regarding Policy Direction on Water Right Enforcement*

Members of the State Water Resources Control Board,

The East Bay Municipal Utility District (EBMUD) submits the following comments to assist the Board in discussing and developing a program to address enforcement issues related to water rights permits. EBMUD is a municipal utility district that supplies water and provides wastewater treatment for parts of Alameda and Contra Costa counties on the eastern side of San Francisco Bay in northern California. The District serves water to over 1.3 million people in the East San Francisco Bay region, and holds several water rights permits and licenses to authorize the operations that allow it to continue these services.

EBMUD agrees with the SWRCB's goals of ensuring predictable, consistent and fair enforcement of water right laws. We are concerned, however, about the systemic issues that presently face the SWRCB in its administration of water rights. As an initial comment, we urge the SWRCB to take the time necessary to ensure that important water rights administration and enforcement issues can be effectively discussed. We believe that the workshop would benefit from an upfront examination of the nature and causes of many perceived noncompliance issues, particularly the issues with the current application and petition backlog and potential options for structuring a water rights enforcement policy. We believe that this is a complex matter that may require additional workshops to ensure sufficient discussion and consideration. Allowing adequate time to explore the issues is essential.

In response to the specific issues raised by the notice, we strongly believe that the SWRCB should provide an opportunity for entities to undertake voluntary compliance or corrective actions before initiating formal enforcement actions against a diverter, applicant, petitioner, permittee, or licensee. The SWRCB's primary function should be administration of a water rights system, and assisting entities in complying with the system only furthers this function. We believe that enforcement should focus on entities that refuse to comply or deliberately evade the system, rather than being directed at entities that are voluntarily correcting inadvertent or minor issues.

Any timelines for voluntary compliance should also be reasonable and set in recognition of the time required both for the regulated entity to gather and submit necessary data and for the State Board staff to process that information. Strict time limitations will often be inappropriate in voluntary compliance situations. In fact, overly strict time limits could merely frustrate entities in their efforts to comply.

We also believe that the SWRCB enforcement efforts should not be directed against existing petitioners that have filed for changes in place or purpose of use or point of diversion, or for extension of existing rights, except in extraordinary case-specific circumstances. Permit terms are not always precise and complex operations often evolve over periods of time. In addition, State Board staff are facing a growing number of pending petitions and applications. We agree that entities that intentionally evade laws and orders in order to benefit economically should not be allowed to escape the consequences of these decisions. Many entities, however, are simply seeking to comply with an overburdened system suffering from a growing backlog and many competing priorities. It does not make sense to punish these entities, particularly as part of the Board's role in processing the petition or application that they have submitted.

EBMUD also believes that permits or licenses should be revoked only for the significant violations and only after the permittee or licensee has failed to voluntarily comply after being given a fair and adequate opportunity to meet the requirements. A viable enforcement policy must recognize that there are relatively few water users who intentionally violate water laws, and that most noncompliance results from mistakes or lack of understanding of water laws. The Board's administration efforts should focus on assisting entities that are seeking to comply. Enforcement should be reserved primarily for entities that deliberately ignore requirements, specifically where there is harm to water uses or the environment.

EBMUD recognizes that the State Board staff have limited resources and a very difficult mission in ensuring that the unauthorized use of water is not allowed to injure other water users or harm the environment. We support the Board's efforts to develop a consistent and fair policy to be applied to water users who intentionally evade compliance with State water laws and regulations. We hope that these comments are helpful in further developing the issues and look forward to working with you further on the water rights enforcement efforts.

Sincerely,

A handwritten signature in dark ink, appearing to read "Alexander R. Coate", with a stylized flourish at the end.

Alexander R. Coate  
Director of Water and Natural Resources

ARC:acr